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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/171836

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 04, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on February 25, 2016, at Waukesha, Wisconsin.

The issue for determination is whether the agency properly denied the Petitioner's application for FS benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

;

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]

Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On December 6, 2015, the Petitioner submitted an application for FS benefits.
3. On January 14, 2016, the agency completed an interview with the Petitioner. She reported that she is enrolled in a 4 year college program. She reported that she is currently completing

practicums which are unpaid. She resides with her parents and has no housing expenses. She also reported working part-time at [REDACTED]. Pay statements reflect that the Petitioner works 17 – 22 hours every two week pay period.

4. On January 26, 2016, the Petitioner provided income verification including pay statements from [REDACTED] dated November 21, 2015, December, 5, 2015, January 2, 2016 and January 16, 2016.
5. On February 2, 2016, the agency issued a Notice of Decision to the Petitioner informing her that the agency denied her application for FS benefits because she does not meet eligibility requirements.
6. On February 4, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

A student enrolled in an institution of higher education can only non-financially qualify for FoodShare benefits in limited circumstances:

Anyone, age 18-49, enrolled half time or more, in an institution of higher education is ineligible, unless s/he meets one of the following criteria.

1. Employed at least 20 hours a week at any wage.
2. Self employed at least 20 hours a week with self employment earnings (after SE expenses are subtracted) equivalent to at least the federal minimum wage for 20 hours a week ( $\$7.25 \times 20 = \$145$  a week).
3. Both employed and self-employed at least 20 hours a week and earning at least the federal minimum wage for 20 hours a week ( $\$7.25 \times 20 = \$145$  a week). Earnings are based on self employment income (after SE expenses are subtracted) plus gross income from other employment.
4. Participating in a federal or state work study program.
5. Responsible for the care of a dependent household member under age 6. If 2 people exercising parental control are in the food unit, allow student status to only 1 person per child.
6. Responsible for the care of a dependent household member who has reached age 6 but is under age 12 if the agency determines adequate child care is unavailable. If 2 people exercising parental control are in the food unit, allow student status to only 1 person per child.
7. Is a single parent enrolled in an institution of higher education on a full-time basis (as determined by the institution) and is exercising care and control of a dependent food unit member under the age of 12. To apply this provision there must be only one biological or adoptive parent, or stepparent in the same food unit as the child. If there is no biological or adoptive parent or stepparent living with the child, another full-time student living with the child may qualify as an eligible student under this provision if the student has parental control of the child and does not live with his or her spouse.
8. Receiving a Tribal TANF [Temporary Assistance for Needy Families] cash payment, W-2 cash payment, or working in a W-2 Trial Job. Assigned to or placed in an institution of higher learning by WIA [Workforce Investment Act].
9. Enrolled in a W-2 employment position or other TANF funded program under Title IV of the Social Security Act.
10. Physically or mentally unfit for gainful employment. Verify the claim, if it's not clear. Receipt of temporary or permanent disability benefits, a statement from a physician, or certified psychologist is appropriate verification.

11. Participating in an on-the-job training program. This exemption applies only during the period of time the person is being trained by the employer.
12. Is assigned to or placed in an institution of higher education through or in compliance with the requirements of FSET [FoodShare Employment and Training].
13. Is enrolled in an educational program that is designed to be completed in 2 years or less and obtaining certification or a diploma from the program will lead to employment that is in demand.

FoodShare (FS) Handbook, at §3.15.1; also found in the Code of Federal Regulations - see 7 CFR 273.5.

The only relevant exception here is number 13 from the list of exceptions noted above. Relevant to the issue of postsecondary education are the following:

...

### **BACKGROUND**

The federal Food & Nutrition Service (FNS) has issued guidance in response to questions raised by Quality Control reviews in several states, related to student eligibility for FoodShare benefits.

Federal regulations prohibit students enrolled at least half time in an institution of higher education from receiving FoodShare benefits unless specific exemptions are met. FNS has broadened the list of acceptable exemptions for certain students if the course of study has a direct link to employment and participation of the student in higher education is equivalent to participating in an education activity that has been approved in the State FSET Plan. Education has been approved as an allowable component in the Wisconsin FSET State Plan.

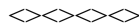
### **POLICY CHANGE**

A student enrolled in higher education at least half time, who does not otherwise meet an exemption for eligible student status, may be eligible to receive FoodShare benefits if:

- The student is enrolled in a business, technical, trade, or vocational school that will result in obtaining a certificate or diploma in 2 years or less, and
- Obtaining the certificate or diploma will lead to employment that is in demand, and
- All other eligibility requirements for FoodShare are met.

...

Operations Memo # 10-80, issued November 15, 2010



#### **1.4.2 Education and Vocational Training**

Educational programs or activities that improve basic skills and employability are qualifying activities that meet the participation requirement as long as there is a direct link between the educational activity and employment.

Allowable educational activities include Adult Basic Education (ABE), basic workplace literacy, English as a Second Language (ESL), high school equivalency (GED), short-term training certification and some types of post-secondary education.

Vocational training activities are also qualifying educational activities for ABAWDs. These training programs improve employability by providing training in a skill or trade, thereby allowing the participant to move directly and promptly into employment.

Acceptable vocational training programs should expect to lead to employment that is in demand.

FSET agencies are encouraged to work with local employers to design customized job skills training programs based on the skill needs of employers in the local labor market. This includes partnering with technical colleges to offer certified qualifying training programs.

The following factors are critical in determining whether FSET funding may be used to fund an educational component:

- A participant must be assigned to, or placed in, an approved educational component by the FSET agency as part of the participant's employment plan;
- FSET funding cannot be used to supplant funds for existing services;
- Charges for FSET students cannot exceed the cost applied to non-FSET students for the same service; and
- A FoodShare member who is an eligible student already attending the institution (without benefit of FSET participation) is exempt from FoodShare work requirements, including FSET participation. While the student may volunteer to participate in another FSET activity, his or her education costs are already being met, and it is not appropriate to use federal funds to subsidize those expenses.

Wisconsin FSET Handbook, §1.4.2.

It is the burden of an applicant to demonstrate that she meets the eligibility criteria to obtain FS benefits. In this case, the Petitioner has not presented evidence to demonstrate that she meets any of the 13 eligibility criteria for students enrolled in higher education programs as listed above. As noted earlier, the only criterion that she might possibly be eligible for is found in #13. At the hearing, the Petitioner testified that she is enrolled full-time in a 2 year program and that she is anticipated to complete the program by the summer of 2018. Petitioner's testimony is inconsistent. She applied for FS benefits in January, 2016 and reported she was enrolled full-time in a graduate program that she will complete by the summer of 2018. From the testimony and evidence provided, this is not a program that is designed to be completed in 2 years or less as January, 2016 until summer, 2018 is more than two years. Also, in order to meet the criterion in #13, the Petitioner must demonstrate that she will obtain "certification or a diploma from the program will lead to employment that is in demand." Petitioner testified that she is obtaining a degree in clinical psychology but there was no evidence presented that this "will lead to employment that is in demand."

In addition, I note that the Operations Memo and relevant Handbook provisions cited above make apparent that the intent behind the exemption at issue is that it applies to short-term basic educational programs and short-term educational programs for skilled trades, not for graduate programs in professional studies. The FoodShare program does not provide for eligibility for 4 year higher educational programs for bachelor degrees so it is not logical that exemption would apply to a master's program.

Based on the evidence presented, I conclude the agency properly denied the Petitioner's application for FS benefits.

### **CONCLUSIONS OF LAW**

The agency properly denied the Petitioner's application for FS benefits.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

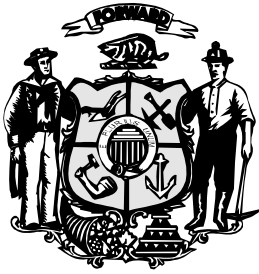
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 29th day of March, 2016

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 29, 2016.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability